

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

JOHN KENT STEPHENSON	§	
	§	
VS.	§	NO: 2:16-CV-00071-JRG-RSP
	§	
	§	JURY TRIAL REQUESTED
CATERPILLAR, INC. AND	§	
SEARS MANUFACTURING CO.	§	

**SEARS MANUFACTURING CO.'S SUR-REPLY TO REPLY TO RESPONSE TO THIRD-
PARTY DEFENDANT BACKER BHV AB'S MOTION TO STRIKE EXPERT WITNESS**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, SEARS MANUFACTURING CO., Defendant in the above-entitled and numbered cause and files this Sur-Reply to Reply to Response to Backer BHV AB's Motion to Strike Expert Witness and in response thereto would respectfully show as follows:

1. Third-Party Defendant Backer BHV AB ("Backer Sweden") has filed a Reply to the Response of Defendant to a Motion to Strike Sears Manufacturing Co.'s retained electrical engineering expert Raphael Franco, PhD EE, PE as an expert witness in this case involving a simple seat heater element with a single bi-metal thermostat. Backer Sweden's Reply does correctly point out that Defendant inadvertently filed the unsigned Affidavit of Dr. Franco and this has been corrected by filing the correct version as an additional or substitute exhibit to the Response and also by filing it again as Exhibit "A' to this Sur-Reply.

Dr. Franco is Qualified to Render Expert Opinions in this Case

2. Backer Sweden doubles down on its argument that simply because Dr. Franco has not testified regarding a seat heater or investigated a seat heater case previously that somehow this should preclude Defendant's retained expert with Doctoral, Masters, and Bachelor's Degrees in Electrical Engineering, Professional Engineering designations in seven separate states, more than 50 years of engineering education, training, and experience, and a resume that is almost unparalleled in the field of electrical engineering from providing expert testimony in this case involving a simple seat heater element with a single bi-metal thermostat. Attached hereto again as Exhibit "A" is the Affidavit of Ray Franco, PhD EE, PE that further complements his curriculum vitae that was previously disclosed. Among the highlights, Dr. Franco explains how his education, training, and experience allow him to opine about the heating element and thermostat involved in this suit.

3. If you take the exclusion argument of Backer Sweden to its logical conclusion that would require this Court to determine that the liability experts designated by Plaintiff and Defendant Caterpillar, Inc. are also unqualified to give opinions in this case. For instance, Plaintiff's retained expert Jeffrey Hautanen (who parenthetically has no degrees in electrical engineering but only a Bachelor's Degree in Bio-Medical Engineering) has admitted that he is not a design engineer and has never designed a heat seater system. (See Exhibit "B", including Pages 6 and 84 from the Deposition of Jeffrey Hautanen). And Dr. Russell, Caterpillar's expert (who does have his

terminal degree in Electrical Engineering) has admitted that he also has never served as an expert witness in a seat heater case. (See Exhibit "C", including Page 11 from the Deposition of B. Don Russell, PhD, PE)

4. Backer Sweden continues to argue that Dr. Franco's opinions 7 and 19 should be stricken because they supposedly ignore an allegedly undisputed fact, that Sears Manufacturing Co. rather than Backer Sweden chose the 50 degree thermostat that was ultimately used with the seat heater in this case. This fallacious argument by Backer Sweden is the subject of much of their motion for summary judgment and Defendant has provided much evidence in response to such motion regarding this fallacy of Backer Sweden's position taken in this motion.

4. Attached hereto as evidence is the following:

- a. Signed Affidavit of Ray Franco, PhD EE, PE.;
- b. Excerpts from Deposition of Jeffrey Hautanen, BS, Biomedical Engineering;
- c. Excerpts from Deposition of B. Don Russell, PhD EE, PE.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court denies Backer BHV's Motion to Strike Expert Witness and for such other and further relief to which Defendant may show itself justly entitled.

Respectfully Submitted,

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A handwritten signature in black ink, appearing to read "R.S.Davis", followed by a horizontal line.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded to all counsel of record via electronic filing on this the 12th day of February 2019.

A handwritten signature in black ink, appearing to read "P.W.McGee", followed by a horizontal line.

Preston W. McGee